

APPEAL NO. 030974
FILED MAY 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 18, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters. The claimant appeals on sufficiency of the evidence grounds. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule criteria for SIBs. At issue in this case is whether the claimant met the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1) and the good faith job search requirements of Section 408.142(a)(4) by returning to work in a position relatively equal to his ability to work, as specified in Rule 130.102(d)(1).

The parties stipulated that the claimant sustained a compensable injury on _____. The qualifying periods for the SIBs quarters in dispute began on July 4, 2002, and ended on January 1, 2003. The claimant testified that he is currently self-employed as an independent contractor salesperson, and that the company he works with leases equipment from manufacturers and in turn, leases it to other businesses. The claimant stated that his business expenses during the qualifying periods exceeded his income and offered as documentary evidence both a summary of his expenses and actual receipts that pertained to his expenditures.

The hearing officer determined that the claimant had not made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods in dispute. She found that the claimant had some ability to work, but had not returned to work in a position "relatively equal" to his ability to work, and that he did not earn any income during the qualifying periods. As discussed in the Statement of the Evidence, the hearing officer recognized that a legitimate self-employed business may be established, but she found that the claimant provided insufficient evidence to support his claim that he was self-employed. The record contains sufficient evidentiary support for the hearing officer's determinations that the claimant did not return to work in a position that was "relatively equal" to his ability to work in the qualifying periods for the first and second quarters and that he, therefore, did not satisfy the good faith requirement under Rule 130.102(d)(1).

The hearing officer is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence.

Section 410.165(a). It is for the hearing officer, as the finder of fact, to resolve the inconsistencies and conflicts in the evidence, including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

There was evidence in the record that the claimant had, during the period from January to July 2001, returned to work as an assistant manager of a large retail store, earning approximately as much as he was earning before his 1998 injury, and that he left that job because of a second claimed injury to different parts of his body, and not because of the 1998 injury. The hearing officer viewed the claimant's decision to be self-employed (noting parenthetically, if he was employed at all) earning no wages, as an economic decision made by the claimant, and not a direct result of the 1998 injury. The record contains sufficient evidentiary support for the determination that the claimant did not meet the direct result requirement. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ATLANTIC MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**NICHOLAS PETERS
12801 NORTH CENTRAL EXPRESSWAY, SUITE 100
DALLAS, TEXAS 75243.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge